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No. 01-1846

In The

Supreme Court of the United States

LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION, INC.,
Petitioner,

V.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
Respondent,

and

STATE OIL AND GAS BOARD OF ALABAMA,
Intervenor.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* IN SUPPORT OF THE RESPONDENT, FILED ON BEHALF OF AMERICAN PETROLEUM INSTITUTE, THE COALBED METHANE ASSOCIATION OF ALABAMA, THE COLORADO OIL & GAS ASSOCIATION, THE DOMESTIC PETROLEUM COUNCIL, THE INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA AND THE US OIL & GAS ASSOCIATION,

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37.2, the American Petroleum Institute, the Coalbed Methane Association of Alabama, the Colorado Oil & Gas Association, the Domestic Petroleum Council, the Independent Petroleum Association of America and the US Oil & Gas Association (collectively "the Proposed *Amici*") respectfully move this Court for leave to file the accompanying brief *amici curiae* in opposition to the Petition for Writ of Certiorari filed by the Legal Environmental Assistance Foundation, Inc. ("LEAF"). Consent for the filing of this brief was granted by counsel of record for Respondent United States Environmental Protection Agency ("EPA") and Intervenor State Oil and Gas Board of Alabama. The consent letter from counsel for EPA has been filed with the clerk's office. Consent was withheld by Petitioner LEAF.

The Proposed *Amici* have a substantial interest in the petition filed by LEAF. LEAF's petition involves the regulation of a technology known as hydraulic fracturing that is used in the production of natural gas and oil. It involves the pumping of water and other fluids into gas or oil wells at high pressures that create fractures in coal seams or other formations which serve as conduits for gas or oil to flow toward the well. LEAF's petition challenges EPA's approval of the rules adopted by the Alabama Oil and Gas Board for the regulation of hydraulic fracturing of certain types of gas wells under the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26 ("SDWA").

The Proposed *Amici* represent the interests of a wide range of companies involved in domestic oil and gas production in the state of Alabama and elsewhere. The members of these associations participate in all sectors of the domestic oil and gas industry, including

production of oil and natural gas. Hydraulic fracturing is increasingly used to enhance production of gas and oil across the country. In fact, in many cases the use of hydraulic fracturing technologies is essential in order to make production of gas from wells economically viable. Accordingly, the members of the Proposed *Amici* rely increasingly on this vital technology in Alabama and elsewhere in order to satisfy the growing demands for domestic energy supplies. LEAF's challenge, if upheld, would affect the way that hydraulic fracturing is regulated in Alabama pursuant to the underground injection control provisions of the SDWA. Therefore, EPA's interpretation of the application of the SDWA to hydraulic fracturing in Alabama is of considerable consequence to the member companies of the Proposed *Amici*.

In addition, the Proposed *Amici* believe that their participation in the case may assist the Court in its review of LEAF's petition. Given the extensive knowledge and experience of their members, the Proposed *Amici* have substantial and unique expertise with respect to both hydraulic fracturing technology and its regulation under the SDWA in Alabama as well as the regulation of hydraulic fracturing activities under various state regulatory programs across the country. The Proposed *Amici* believe that the expertise they offer may assist the Court in understanding the issues raised by LEAF's petition for certiorari and in determining whether that petition is worthy of the Court's review.

For the reasons stated above, the Proposed *Amici* respectfully request that this Court grant their motion for leave to file this brief.

Dated: September 18, 2002

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The American Petroleum Institute, the Coalbed Methane Association of Alabama, the Colorado Oil & Gas Association, the Domestic Petroleum Council, the Independent Petroleum Association of America and the US Oil & Gas Association respectfully file this brief as *amici curiae* in support of the Respondent, United States Environmental Protection Agency ("EPA").[1]

INTEREST OF *AMICI CURIAE*

This case involves the regulation of a technique known as hydraulic fracturing that is used to facilitate the production of natural gas and oil from wells. This technology, which involves the injection of liquids at high pressures into a gas or oil well to create fractures in coal seams or other formations that serve as conduits along which oil or gas can travel to a wellbore, is widely used to increase the productivity of gas and oil wells and is essential in many cases in order to make production of gas or oil from a well economically viable. As a result, many companies that are involved in the domestic production of natural gas and oil are vitally interested in regulatory requirements relating to hydraulic fracturing that may affect the ability of operators of gas and oil wells to make use of this important technology. The *amici* represent these companies that are involved in domestic production of natural gas and oil.

The American Petroleum Institute ("API") represents more than 400 companies involved in all aspects of industry

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[1] No counsel for any party has authored this brief in whole or in part. In addition to the listed *amici*, entities that have made monetary contributions to the preparation and submission of this brief include Columbia Natural Resources, EL Paso Production Company, Equitable Production Company, and the Ohio Oil & Gas Association.

oil and gas operations, including the exploration, production, refining and marketing of oil and gas products. The regulation of hydraulic fracturing activities in Alabama in connection with oil and gas production operations under the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26 ("SDWA"), has had a direct and substantial impact on API members and their efforts to develop domestic energy supplies.

The members of the Coalbed Methane Association of Alabama ("CMAA") are engaged in the development and production of coalbed methane resources in Alabama. Coalbed methane wells in Alabama must generally be hydraulically fractured in order for the well to be a productive source of natural gas. Alabama coalbed methane operators are the only coalbed methane developers in the country currently subject to the regulation of hydraulic fracturing as underground injection under the SDWA. The outcome of this litigation will have a direct effect on the entire membership of CMAA.

The Colorado Oil & Gas Association ("COGA") is the business trade association for the oil and gas industry in Colorado. While COGA's activities are focused primarily on producers of oil and gas, it also represents pipeline operators, processors and power generators. The vast majority of oil and gas wells drilled in Colorado are hydraulically fractured, including those related to gas from tight sands and coal seams in all the state's major basins.

The Domestic Petroleum Council ("DPC") is a national trade association representing 23 of the largest independent natural gas and crude oil exploration and production companies in the United States. The DPC companies are among the most active in applying leading-

edge technology, including hydraulic fracturing, to meet the increasing domestic demand for energy supplies.

The Independent Petroleum Association of America ("IPAA") represents the interests of independent gas and oil producers, which collectively account for approximately 40 percent of America's crude oil production and 65 percent of America's natural gas production. IPAA members drill many domestic natural gas and oil wells in Alabama, more than 50 percent of which require hydraulic fracturing in order to facilitate the production of oil and natural gas supplies. IPAA members therefore have a strong interest in the regulation of hydraulic fracturing in Alabama.

The US Oil & Gas Association has over 3,000 members representing all sectors of the domestic oil and gas industry. The Association's mission is to promote and protect the oil and gas industry. Many of the Association's members are affected by regulatory controls on hydraulic fracturing of oil and gas wells.

SUMMARY OF ARGUMENT

Essentially conceding that there is no conflict among the circuits on the question it presents, petitioner Legal Environmental Assistance Foundation, Inc. ("LEAF") nevertheless asks this Court to review and reject the determinations of EPA and the U.S. Court of Appeals for the Eleventh Circuit regarding a narrow and unremarkable provision of the SDWA. However, the petition for certiorari filed by LEAF is without any merit.

First, LEAF has completely failed to demonstrate that the narrow issue it raises, which concerns one aspect of EPA's approval of Alabama's program for regulating hydraulic fracturing of coalbed methane ("CBM") wells under the SDWA, satisfies the criteria generally used by the

Court in considering whether to grant a petition for certiorari. For example, LEAF has made no effort to demonstrate that the decision of the Eleventh Circuit below is in any way in conflict with a decision of another U.S. court of appeals or a decision of this Court. LEAF has likewise made no allegation that the validity of EPA's determination regarding the compliance of the Alabama program with section 1421 of the SDWA, 42 U.S.C. § 300h, is an important issue of federal law that requires resolution by this Court. This failure by LEAF to address these important considerations is in essence an admission by LEAF that the petition does not satisfy the Court's standards for review and should lead to the conclusion that certiorari is not appropriate in this case.

Furthermore, the Eleventh Circuit was correct in upholding EPA's approval of the Alabama underground injection control ("UIC") program for Class II wells. EPA's determination that Alabama's program for regulating hydraulic fracturing meets the requisite standards for state UIC programs set forth in section 1421(b) of the SDWA, 42 U.S.C. § 300h(b), is the type of technical judgment by a federal regulatory agency that is entitled to substantial deference. Moreover, in enacting section 1425 of the SDWA, *id.* § 300h-4, Congress intended that states should have flexibility in meeting the Act's requirements when establishing programs for regulating activities related to oil and gas production. In light of these standards, EPA's conclusion that Alabama's program satisfies the provision of section 1421(b)(1)(B)(i) of the SDWA, *id.* § 300h(b)(1)(B)(i), which requires operators to demonstrate that their underground injection activities will not endanger underground sources of drinking water, is more than amply

supported by the record. The Eleventh Circuit's decision to affirm EPA's judgment should therefore be upheld.

ARGUMENT

I. LEAF HAS FAILED TO DEMONSTRATE THAT ANY OF THE CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI SUPPORT A GRANT OF THIS PETITION

The question presented for review by LEAF is an exceedingly narrow one, *i.e.*, whether the Eleventh Circuit erred in upholding EPA's approval of Alabama's program for regulating hydraulic fracturing as underground injection under the SDWA. In this Court, LEAF questions only a single aspect of EPA's approval of Alabama's program, arguing that EPA erroneously determined that Alabama's program meets the requirements of section 1421(b)(1)(B)(i) of the SDWA. That provision of the Act specifies that states must require operators of underground injection wells to demonstrate to the state that their underground injection activities will not endanger drinking water sources, which is defined under the Act to include injection activities that result in the presence of contaminants in underground sources of drinking water at levels that may violate national primary drinking water regulations (known as "maximum contaminant levels" or "MCLs") or that may otherwise adversely affect the health of persons. LEAF concedes that the regulations of the Alabama Oil and Gas Board regarding hydraulic fracturing of CBM wells require operators to demonstrate compliance with the MCLs but contends that Alabama's program does not require operators to make a demonstration that hydraulic fracturing activities will not otherwise adversely affect human health. Thus, the question

presented to the Court is a very narrow one regarding a very specific and limited aspect of one state's UIC program.

In making this claim, LEAF has failed to demonstrate that any of the considerations used by the Court in evaluating whether to grant a petition for certiorari in fact support the grant of this petition. According to Rule 10 of the Supreme Court Rules, the Court will grant a writ of certiorari only for compelling reasons. Rule 10 identifies a number of considerations that govern the Court's review of a petition for certiorari, including whether: (a) a U.S. court of appeals has entered a decision that is in conflict with the decision of another U.S. court of appeals on an important matter, or has decided an important federal question in a way that conflicts with a decision by a state court of last resort, or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of the Court's supervisory power; or (b) a U.S. court of appeals has decided an important question of federal law that has not been, but should be, settled by the Court, or has decided an important federal question in a way that conflicts with relevant decisions of the Court.

LEAF's failure to even address the applicability of these considerations in its petition should be seen as an implicit acknowledgement that the question presented by LEAF for review does not meet the Court's standards for review on certiorari. Indeed, a review of these considerations demonstrates that none of the factors identified by the Court as supporting a grant of a petition for certiorari is present in this case.

First, the Eleventh Circuit's decision to uphold the Alabama program does not conflict with any decisions issued by any other U.S. court of appeals or any state court. In fact, the ruling by the court below represented the first

time that a federal court has been called on to consider whether a state UIC program met the requirement of section 1421(b)(1)(B)(i). Therefore, there is no conflict for the Court to resolve.

Similarly, the Eleventh Circuit's decision does not conflict with any decision of this Court in any manner. This Court has not had occasion to interpret the requirements of section 1421 of the SDWA. Moreover, the standards employed by the Eleventh Circuit comport with this Court's decisions concerning judicial review of federal agency action under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Therefore, there can be no conflict between the Eleventh Circuit's decision and any previous decisions of the Court.

Finally, the issue presented in LEAF's petition is not the sort of "important question of federal law" with respect to which the Court normally grants certiorari.[2] For example, the issue presented for review is not significant to the overall administration of the SDWA as a whole, *cf. United States v. Ruzicka*, 329 U.S. 287 (1946) (issue concerned enforcement authority of Department of Agriculture that affected overall administration of the Agricultural Marketing Agreement Act); the construction of the statute by the lower court is not at odds with a well-established construction given the statute by the administrative agency charged with its enforcement, *cf. Morton v. Ruiz*, 415 U.S. 199, 201-02 (1974); nor is the issue novel or troublesome and involved in numerous pending cases in lower courts, *cf. Laing v. United States*, 423 U.S. 161, 167 (1967).

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[2] "Importance" in this context refers to the importance of the issue to the public as a whole, not its importance to the parties. *Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 79 (1955).

Moreover, the dispute in this case does not involve a claim for very large amounts of money, *cf. United States v. Mitchell*, 463 U.S. 206, 211 n.7 (1983) (case involved claim for over $100 million); does not directly affect many individuals, *cf. Patterson v. Lamb*, 329 U.S. 539, 541 (1947) (lower court decision affected thousands of World War I draftees); nor are a large number of administrative actions similar to the one at issue here pending before the Agency, *cf. FTC v. Jantzen, Inc.*, 386 U.S. 228, 229 (1967). Finally, the dispute here does not relate to the nature and scope of obligations between and among the States, *cf. Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 101, 110 (1938); nor does it concern the scope of authority of congressional committees, *cf. United States v. Rumely*, 345 U.S. 41, 42 (1953).

Instead, LEAF's certiorari petition simply challenges one limited and very discrete aspect of an administrative agency's action in approving a single state's comprehensive plan in accordance with the requirements of a federal statute. There is no indication that the decision of the Eleventh Circuit in this case has any relevance whatsoever to the enforcement of the SDWA generally, or that a large number of lower courts and agencies are awaiting resolution of this particular issue, or that there is any other way in which the issue presented in LEAF's certiorari petition can possibly be construed as a matter of important national interest.

Because LEAF has presented no evidence of any conflict between any courts on the issue that LEAF seeks to bring before the Court, and because the subject matter of LEAF's petition is certainly not a matter of national import of the sort that usually serves as the basis for a grant of a petition for certiorari, this Court should deny LEAF's request for certiorari.

II. THE ELEVENTH CIRCUIT'S DECISION WAS CORRECT

The Court should also deny the petition for certiorari because the decision below was correct. The Eleventh Circuit appropriately deferred to EPA's expert judgment that the Alabama program complies with the requirements of the SDWA. EPA in turn correctly concluded that the Alabama program satisfies the requirements of the Act that operators demonstrate that their underground injection activities will not endanger drinking water sources.

A. EPA's Determination Is Entitled to Deference

EPA's determination that the Alabama program meets the requirements of section 1421(b)(1)(B)(i) of the SDWA is entitled to substantial deference. This determination is reviewed under the deferential standards set forth in the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-59, 701-06. Under the APA's deferential standard of review, an agency action cannot be overturned unless it is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The scope of review under the "arbitrary and capricious" standard is narrow and a court is not to substitute its judgment for that of the agency. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983).

In addition, the determination regarding the specific steps that a state must take to satisfy the requirements of section 1421(b)(1)(B)(i) has been left by Congress to EPA. In such cases, considerable weight should be accorded to an agency's construction of a statute it is designed to administer. *Chevron U.S.A. Inc. v. Natural Res. Defense Council, Inc.*,

467 U.S. 837, 844 (1984). Moreover, in deciding whether a state has taken sufficient steps to require an operator to demonstrate that an underground injection activity will not adversely affect human health, the Agency must utilize its expertise regarding underground sources of drinking water and the effectiveness of various regulatory measures to protect such drinking water sources. In such circumstances, a court must "defer to 'the informed discretion of the responsible federal agencies.'" *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 377 (1989) (*citing Kleppe v. Sierra Club*, 427 U.S. 390, 412 (1976)). *See also Babbitt v. Sweet Home Chapter of Communities for a Great Or.*, 515 U.S. 687, 708 (1995) ("When Congress has entrusted [an agency] with broad discretion, we are especially reluctant to substitute our views of wise policy for [those of the agency]."). Thus, EPA's approval of Alabama's program should not lightly be overturned.

EPA's determination is also entitled to deference because it is a product of a long and careful review process by the Agency. The Alabama Oil and Gas Board adopted its hydraulic fracturing regulations after consulting with EPA and providing the public with an opportunity for comment on the proposed regulations. EPA in turn approved the Alabama regulations only after several public hearings and consideration of extensive and detailed comments submitted by LEAF and others. In approving the Alabama program, EPA provided a detailed explanation of the rationale for its decision and specifically addressed the arguments that LEAF now advances in its petition. 65 Fed. Reg. 2889 (2000). Thus, LEAF's arguments have been carefully considered at every stage of this proceeding.

B. Section 1425 Applies to Hydraulic Fracturing Activities and Provides States with Significant Flexibility in Meeting the Requirements of the SDWA

The Act provides Alabama with significant flexibility in meeting the requirements for UIC programs, including the requirement of section 1421(b)(1)(B)(i). As the court below found, EPA was authorized to review the adequacy of the state's program relating to permitting of hydraulic fracturing activities pursuant to the standards of section 1425 of the Act, 42 U.S.C. § 300h-4. *See Legal Envt'l Assistance Found., Inc. v. U.S. Environmental Protection Agency*, 276 F.3d 1253, 1258-61 (11th Cir. 2001). Section 1425 provides that, in seeking approval of a program for the regulation of certain types of underground injection that are associated with oil and gas development, a state may demonstrate that its program meets the statutory standards for state programs set forth in section 1421(b)(1) and is an effective program to prevent underground injection which endangers drinking water sources and need not demonstrate compliance with each of the specific detailed regulatory requirements promulgated by EPA for UIC programs, *see* 40 C.F.R. Parts 144-146.

Congress enacted section 1425 in 1980 in order to provide oil and gas producing states with some degree of flexibility in meeting the requirements of the Act for approval of state UIC programs. As the House Committee on Interstate and Foreign Commerce noted:

> Most of the 32 states that [already] regulate underground injection related to the recovery or production of oil or natural gas (or both) believe they have programs already in place

> that meet the minimum requirements of the Act including the prevention of underground injection which endangers drinking water sources. This is especially true of the major producing states where underground injection control programs have been underway for years. *It is the Committee's intent that states should be able to continue these programs unencumbered with additional Federal requirements if they demonstrate that they meet the requirements of the Act.*

H.R. Rep. No. 96-1348, at 5 (1980), *reprinted in* 1980 U.S.C.C.A.N. 6080, 6084 (emphasis added). *See also* 126 Cong. Rec. H931 (daily ed. Sept. 20, 1980) (statement of Rep. Broyhill) (section 1425 "should free the producing States which have been doing a good job of regulating underground injection relating to oil and natural gas from the requirements of EPA regulations and allow them to continue their current programs"). Congress further emphasized that state programs relating to oil and gas production should be subject to as little federal control as possible by providing that EPA regulations for UIC programs may not "interfere with or impede" oil and gas production unless such requirements are essential to ensure that underground sources of drinking water will not be endangered. 42 U.S.C. § 300h-1(b)(2).

Consistent with these congressional directives, EPA has long recognized that, in seeking approval of programs pursuant to section 1425, states have flexibility in meeting the standards of section 1421 of the Act. EPA has not issued specific regulations setting forth requirements for such programs, but has instead issued guidance that states may follow in developing programs pursuant to section 1425. *See*

46 Fed. Reg. 27333 (1981). EPA's guidance is "much less detailed" than the regulations that apply to other UIC programs and "leaves a great deal more discretion to the State to develop and EPA to approve State UIC programs under Section 1425." *Id.* at 27334.

Thus, Congress intended that States be given flexibility in meeting the statutory requirements of section 1421 as they apply to activities such as hydraulic fracturing that relate to oil and gas production. LEAF has requested that the Court grant certiorari in order to closely examine the details of an EPA-approved program that was evaluated pursuant to a statutory provision adopted by Congress with the specific purpose of granting the states a substantial degree of latitude in meeting statutory criteria. There is no reason for the Court to conduct such a review.

C. EPA Correctly Determined that Alabama's Program Complies With the Provision of the Act Requiring Applicants to Satisfy the State That Underground Injection Will Not Endanger Drinking Water Sources

In light of these standards, it is evident that EPA's determination that the Alabama program satisfies the requirements of section 1421(b)(1)(B)(i) finds ample support in the record. As noted above, while the Act provides that a well operator must demonstrate that its underground injection activity will not endanger drinking water sources, it does not specify how such a demonstration must be made. Rather, EPA's regulatory guidance provides that such a demonstration may be made in a variety of ways. 46 Fed. Reg. at 27336. The Agency guidance specifies that the burden must remain on the operator to provide the state with sufficient information to determine that the proposed

underground injection will not violate maximum contaminant levels or otherwise adversely affect the health of persons, but provides states with flexibility in determining what information must be submitted by an operator. *Id.* Moreover, the EPA guidance indicates that the state need not require the submission of specific information that is already in the state's files. *Id.*

Consistent with these guidelines, the Alabama program contains numerous provisions that ensure that hydraulic fracturing activities will not adversely affect the health of persons. For example, the Alabama regulations mirror EPA regulations by specifically prohibiting hydraulic fracturing activities that would adversely affect human health. Ala. Admin. Code r. 400-3-8-.03(2). This express prohibition alone should be more than sufficient to protect drinking water sources.

However, the Alabama regulations go even further and do not rely solely on this prohibition against adversely affecting human health in order to satisfy the requisite criteria for approving this program. For example, the regulations contain numerous other key provisions to ensure that hydraulic fracturing activities do not adversely affect public health. These provisions include a prohibition on hydraulic fracturing within 300 feet of the surface, where most drinking water wells are found. *Id.* r. 400-3-8-.03(d). For proposed fracturing activities from 300 to 750 feet below ground surface, an applicant must provide information regarding the locations of nearby drinking water wells and the Alabama Oil and Gas Board is authorized to deny approval of a proposed hydraulic fracturing activity if any such wells could be adversely impacted by the proposed activity. *Id.* r. 400-3-8-.03(c)(3). Moreover, consistent with EPA guidance, such applicants must provide the Board with

a description of the proposed fracturing operation, including the maximum length of the fractures to be created in the coalbed formation and the types of fluids and materials to be used in the fracturing operations. *Id.* r. 400-3-8-.03(c)(4). In addition, all applicants seeking approval of underground injection activities must provide well logs showing that there is an adequate confining layer to prevent upward migration of fracturing fluids. *Id.* r. 400-3-8-.03(a)(5). Applicants must also provide information to the Board concerning the construction of the CBM well that is to be fractured in order to demonstrate that the well itself will not serve as a conduit for the transmission of contaminants from deeper formations where fracturing is to occur to shallower formations where drinking water wells may be found. *Id.* R. 400-3-8-.03(a)(2), (3). These provisions are more than adequate to satisfy the requirements of the SDWA, particularly in light of the fact that there is no evidence that any drinking water wells have ever been contaminated due to hydraulic fracturing activities.[3]

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[3] This lack of evidence of actual contamination has recently been reaffirmed in a draft study released by EPA. U.S. Environmental Protection Agency, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs* (2002), *available at* www.epa.gov safewater/uic/cbmstudy.html. EPA has described this study as the most extensive study ever undertaken of the potential impact of the hydraulic fracturing of CBM wells on underground sources of drinking water. The report concludes that the potential threat to underground sources of drinking water posed by hydraulic fracturing of coalbed formations such as occurs in Alabama is low and that, although thousands of coalbed methane wells are hydraulically fractured nationwide on an annual basis, there is no persuasive evidence that any drinking water wells have been contaminated by such fracturing operations. *Id.* at ES-1. In light of this low level of risk, the information regarding proposed hydraulic fracturing operations that operators must submit to the Alabama Oil and Gas Board is more than sufficient for the Board to satisfy itself that such operations will not adversely affect human health.

Thus, LEAF's argument that the Alabama UIC program does not comply with the requirements of section 1421(b)(1)(B)(i) is wholly without merit. This Court should not grant certiorari in order to hear arguments on appeal from a decision to approve the Alabama UIC program that was clearly based on sound decisionmaking.

CONCLUSION

LEAF's petition for certiorari should be rejected for several reasons. First, LEAF's petition does not offer a single justification for granting certiorari under the standards normally applied by the Court. Indeed, LEAF's failure to present such an argument is quite possibly attributable to the fact that LEAF's petition does not resemble in any manner the sort of dispute that the Court normally deems worthy of review. There is no conflict in the lower courts on the issue presented by LEAF, the Eleventh Circuit opinion does not clash with Supreme Court precedent, and LEAF's petition does not present any pressing issue of national concern of the type that might prompt the Court to grant certiorari.

Furthermore, LEAF's substantive position has no merit. The Alabama UIC program complies with the statutory requirements of the SDWA, and EPA was correct to approve the revised program. The Eleventh Circuit rightly deferred to EPA's judgment on this matter and upheld the decision with respect to the program's compliance with the requirements of section 1421(b)(1)(B)(i). Indeed, the Alabama UIC program contains language nearly identical to that found in the relevant SDWA section. LEAF's argument that the Alabama program somehow does not comply with this section is, therefore, wholly without merit. For these reasons, LEAF's petition for certiorari should be denied.

Dated: September 18, 2002

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